Supreme Court, U.S.
FILED

00-350 SEP - 6 2000

OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

MING-CHIANG LI

Petitioner

versus

JOHN. A. MONTGOMERY, HERBERT W. ZWACK, FRANCIS J. KLEMM, JANET R. DESCHAK, LYNDA C. HEATER, and J. R. LOVE

Respondents

On Petition For Writs Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit.

PETITION FOR WRIT OF CERTIORARI

Ming-Chiang Li, pro se
11415 Bayard Drive
Mitchellville, Maryland 20721
Telephone: (301) 262-7429

21 pp

QUESTION PRESENTED FOR REVIEW

Whether a Chinese American working in a defense organization is the same as a prisoner working at United States Naval Air Station?

Whether a Chinese American working in a defense organization is under the legal compulsion and is not voluntary?

Whether property right is the same as the discoverer's equity to enjoy the name, reward, recognition, more funding, better pay, and higher position created by his discoveries.

Whether a Chinese American working in a defense organization has equities of his own for revolutionary discoveries?

Whether anyone can seize a Chinese American's equities created by his discoveries for self enrichment to get own name, reward, recognition, more funding, better pay, or higher position?

Whether a Chinese American has Constitutional Rights in equity for his revolutionary discoveries?

LIST OF PARTIES

THE COLUMBIA CIRCUIT No.: 99-5106

Petitioner-Plaintiff: Ming-Chiang Li,

Respondents-Defendants: John A. Montgomery, Herbert W. Zwack, Francis J. Klemm, Janet R. Deschak, Lynda C. Heater, and J. R. Love.

TABLE OF CONTENTS

	Pages
QUESTION PRESENTED FOR REVIEW	i
LIST OF PARTIES	ii
TABLES OF CONTENTS	iii
TABLES OF AUTHORITIES	iv
PETITION FOR WRIT OF CERTIORARI	1
REFERENCE TO REPORTS OF OPINIONS	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED	1
STATEMENT OF THE CASES	2
REASONS FOR GRANTING THE WRIT	3
BIVENS' CLAIMS	4
Equities	4
Not Under Compulsion	5
Erroneous Ruling	5
Constitutional Right	5
Arbitrary Court Decision	6
CONCLUSION	7
APPENDIX	*infra*

TABLE OF AUTHORITIES

Cases

Pages

Henthorn v. Department of the Navy, 29 F. 3d 682 (D. C. Cir. 1994) ---------- 5

Statutes

Fifth Amendment ---------- *passim*

Fourteenth Amendment ---------- *passim*

28 U.S.C.§ 1254 ---------- *passim*

PETITION FOR WRIT OF CERTIORARI

The petitioner, Ming-Chiang Li, respectfully petitions This Honorable Court to issue writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit.

REFERENCE TO REPORTS OF OPINIONS

The unpublished decision (No. 99-5106) of the Court of Appeals for the District of Columbia Circuit was filed on May 15, 2000 (App. A - 2, A - 3). The orders of denial for hearing petition and en banc were filed on June 15, 2000 (App. A -1)

JURISDICTION

The jurisdiction of this court is invoked pursuant to 28 U.S.C.§ 1254(1)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in pertinent part: No person shall ... be deprived of life, liberty, or property, without due process of law....

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part: Nor deny to any person ... the equal protection of law.

In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed.2d 619 (1971) the Court upheld that federal officers as individuals could be sued for constitutional violations directly under the Constitution.

STATEMENT OF THE CASES

The present law suit in petition is against Defendants, who are/were federal officers, for their intentional fraudulent and unjustified acts. Defendants had purposely stolen Plaintiff's equities in his discoveries for their own enrichment. These discoveries created Plaintiff's lawful equities, which are protected by Law and the Constitution. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics* (403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed.2d 619 (1971)), the Court upheld that federal officers as individuals could be sued for constitutional violations directly under the Constitution.

Part of the present law suit was a part of the discrimination and corruption suit filed in the District Court of Maryland Southern Division (Civil Action No. AW 97-3651). Maryland Court ruled that the corruption complaint was still under administrative investigation and was not mature enough to bring into the Court, and ordered the Maryland suit be amended only to encompass promotion discrimination and reprisal complaints. After the order, the Maryland suit was amended and the corruption complaints were dropped. The present law suit was filed after the end of the administrative investigation on corruption at Naval Research Laboratory.

Defendants filed a motion to dismiss on the grounds of collateral estoppel and res judicata, or alternatively to transfer to the District Court of Maryland. Upon Defendants' motion, the District Court of Columbia dismissed the present law suit (App. A-7).

Plaintiff filed an appeal on May 17, 1999. Defendants responded with a motion for summary affirmance on June 1, 1999 with the same argument of res judicata and/or collateral estoppel, but refused to address their

intentional fraudulent and unjustified acts of stealing Plaintiff's equities for their own enrichment.

Plaintiff responded to Defendants' motion for summary affirmance on June 18, 1999. Plaintiff argued that Defendants had waived their rights in challenging Bivens' claims by not addressing their intentional fraudulent and unjustified acts of stealing in their motion. On September 20, 1999, Plaintiff responded to a court's order of August 17, 1999 to show cause. In the response, Plaintiff showed that his Bivens' relief was not preempted by Title VII of the Civil Rights Act of 1964, Whistleblower Protection Act of 1989, and Civil Service Reform Act.

The Court of Appeals, on November 9, 1999, ordered that the order to show cause be discharged, and that Appellees' motion for summary affirmance be denied. The Court of Appeals stated that the merits of the parties' positions are not so clear as to warrant summary action.

On November 23, 1999, the Court of Appeals established a briefing schedule. Without an oral argument, the Appeals Court affirmed the decision of District Court on May 15, 2000.

REASONS FOR GRANTING THE WRIT

A. A Chinese American working in a defense organization is not the same as a prisoner working at a United States Naval Air Station.

B. A Chinese American working in a defense organization is not under legal compulsion.

C. It is a Constitutional Right that a Chinese American working in a defense organization has equities of his own for his revolutionary discoveries.

D. Property right is not the same as the equity to enjoy the rewards, recognition, greater funding, better pay, and higher position created by his discoveries.

E. The District Court of Columbia District disregarded Plaintiff's Constitutional Right to his equities created by his revolutionary discoveries, and allowed these equities to be seized by white Americans for their own enrichment to get their own rewards, recognition, greater funding, better pay, or higher positions.

On Bivens' Claim

The present law suit is against individual Defendants, who are/were federal officers, for their intentional fraudulent and unjustified acts. Individual Defendants had purposely stolen Plaintiff's equities from his revolutionary discoveries of electronic warfare technologies for their own enrichment. These equities are protected by Law and the Constitution. In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed.2d 619 (1971) the Court held that federal officers as individuals could be sued for constitutional violations directly under the Constitution.

Equities

Plaintiff's discoveries created his equities, from which he should enjoy the rewards, recognition, greater funding, better pay, and higher position. He should have enjoyed other associated benefits and compensation as well. Instead, through their intentional fraudulent and unjustified acts, individual defendants stole Plaintiff's equities for their own enrichment in getting rewards, recognitions, greater funding, better pays, and higher positions from Plaintiff's discoveries for themselves. Furthermore, individual Defendants removed Plaintiff from his position in 1994 for the purpose of keeping their spoils.

Not Under Compulsion

Most portions of the DC Court's opinion in dismissing the present law suit were irrelevant. These irrelevant portions arose from the confusion generated by Defendants to mask their actions of stealing from Plaintiff. The only relevant portions were the last two paragraphs (App. A-5, A-6)

The DC Appeals Court in achieving its decision ruled that the present DC case is equivalent to the court case of *Henthorn v. Department of the Navy,* 29 F. 3d 682 (D. C. Cir. 1994), which barred Henthorn, a prisoner, from suing under the Fair Labor Standard Act (FLSA). Henthorn's case stated that a federal prisoner seeking claims under FLSA must not be under legal compulsion.

Through the equivalence, the Appeals Court ruled that the allegations in the present law suit were insufficient to state a claim for which relief can be granted. Plaintiff was not a prisoner under legal compulsion, and has a Constitutional right for his Bivens' claim against Defendants. The ruling had no foundation, and neither did the decision.

Erroneous Ruling

The Appeals Court ruled that Plaintiff made an assertion of property rights in patentable discoveries (App. A6), and dismissed the present law suit for failing to state a claim under Constitutional Rights.

Plaintiff never raised an issue of property rights in his allegation. Property rights and the equity are two entirely different entities. Bivens' claim is against Defendants for stealing Plaintiff's equities. The Appeals Court's ruling had no foundation, and neither did the decision of dismissal.

Constitutional Right

Plaintiff in the present law suit seeks his right under the Constitution to enjoy his equities in the rewards, recognition, greater funding, better pay, and higher position resulting from his discoveries. The equivalence rendered by the Appeals Court indicates that Plaintiff as a Chinese American scientist working at Naval Research Laboratory is similar to a prisoner working under compulsion, and that Plaintiff has no Constitutional Right to enjoy his equities of discoveries. Hence, according to the decision, anyone can seize Plaintiff's equities in his revolutionary discoveries as his own for self enrichment.

The DC Appeals Court's decision has disregarded Plaintiff's Fifth and Fourteenth Constitutional Rights and must be reversed. A standing of DC Appeals Court's decision in dismissing the present law suit would mean that a Chinese American working in any defense organization has no Constitutional right of equity for his discoveries. The decision sets an example that any one can obtain self enrichment in rewards, recognition, greater funding, better pay, and higher position by seizing the discoveries of any Chinese American working in a defense organization. Hence, the DC Appeals Court's decision involves a matter of exceptional importance.

Arbitrary Court Decision

The Appeals Court of the Columbia Circuit denied Plaintiff's right of equity in rewards, recognition, greater funding, better pay, or higher position created by his revolutionary discoveries.

The above court decisions are in contradiction to the Constitution and Federal Rules of Civil Procedure. These decisions mean that a Chinese American working in a defense organization is not protected by the Constitution. Hence, these decisions involve a matter of exceptional importance.

CONCLUSION

This case illustrates the types of professional shackles placed on Chinese Americans working in a defense organization. It is not the only such case of discrimination against a Chinese American in the Electronic Warfare Division of Naval Research Laboratory. In March 1991, a second Chinese American, who is an eminent leader in his own technical field, was forced to resign. The occurrence of these two cases was not coincidental. Old Chinese Americans are second class citizens in a defense organization with no Constitutional Rights.

Defendants used their administrative and management authority to cover up their Bivens' violations through false statements and perjuries. These acts were supported by the Naval Research Laboratory and Department of Justice, as shown by their lawyers in defending the present cases through their deliberately manufactured lies and distortions of the facts to mask their Bivens' violations.

Plaintiff has been fighting the present cases for ten years. It shows how hard Plaintiff has been fighting against injustice to restore his Constitutional Rights. Not so many are willing to persevere. Plaintiff hopes that justice will prevail.

Defendants' actions against Chinese Americans in defense organizations not only hurt the victims, but also hurt the nation's security and defense. Plaintiff has revolutionized electronic warfare technologies, and is capable of pushing these technologies to higher levels. Furthermore, with Plaintiff's expertise and leadership, he is equally capable of revolutionizing radar technologies as well.

Plaintiff has been in the United States for nearly forty years. In recent years, many Chinese have immigrated to

this country. They have become one of the major forces in pushing the advancement of high technology. Some of them will become as professionally mature as Plaintiff and may move into defense organizations. The policies of defense organizations and the Department of Justice in letting white Americans steal Chinese American equities for their own self enrichment will prevent the movement from happening and will weaken the nation's security.

Remand the present cases for jury trial with discovery. Defendants must recompense Plaintiff for stealing his equity for their own self enrichment. Plaintiff's Constitutional Rights must be restored.

For the foregoing reasons, certiorari should be granted.

Respectfully Submitted,

Petitioner Ming-Chiang Li, pro se

APPENDIX
TABLE OF CONTENTS

Order of the United States Court of Appeals for the District of Columbia Circuit on June 15, 2000 ---------- A-1

Judgment of the United States Court of Appeals for the District of Columbia Circuit on May 15, 2000 ---------- A-2

Memorandum of the United States Court of Appeals for the District of Columbia Circuit on May 15, 2000 ---------- A-3

Oder of the District Court for the District of Columbia on March 19, 1999 ---------- A-7

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.: 99-5106

MING-CHIANG LI,

Plaintiff-Appellant

v.

JOHN. A. MONTGOMERY. et al.

Defendants-Appellees.

Appeal from the United States District court
for the District Court of Columbia
No. 98cv2719 Thomas Penfield Jackson, Judge

Before: EDWARD, Chief Judge, SILBERMAN, WILLIAMS, GINSBERG, SENTELLE, HENDERSON, RANDOLPH, ROGERS, TATEL, and GARLAND, Circuit Judges

---

ORDER
(Dated June 15, 2000)

Upon consideration of Appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

Ordered that the petition be denied.

Per Curiam

For the Court:
Mark J. Langer, Clerk

By /s/ Robert A. Bonner
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.: 99-5106

MING-CHIANG LI,

Plaintiff-Appellant

v.

JOHN. A. MONTGOMERY. et al.

Defendants-Appellees.

Appeal from the United States District court
for the District Court of Columbia
No. 98cv2719 Thomas Penfield Jackson, Judge

Before: SILBERMAN, SENTELLE, and ROGERS

Appeal Decided May 15, 2000

JUDGMENT

This appeal was considered on the record from the United States district Court for the District of Columbia and on the briefs of the parties. The court has determined that the issues presented occasion no need for a published opinion . See D.C. Cir. Rule 36(b).

ORDERED AND ADJUSTED that the judgment of the District Court be affirmed.

The clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 41.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No.: 99-5106

MING-CHIANG LI,

Plaintiff-Appellant

v.

JOHN. A. MONTGOMERY. et al.

Defendants-Appellees.

Appeal from the United States District court
for the District Court of Columbia
No. 98cv2719 Thomas Penfield Jackson, Judge

Before: SILBERMAN, SENTELLE, and ROGERS

Appeal Decided May 15, 2000

MEMORANDUM

Dr. Ming-Chiang Li appeals the district court s order dismissing his pro se complaint (hereafter "the D.C. complaint") filed against his former supervisors and other employees at the Naval Research Laboratory ("NRL"). In the main, the D.C. complaint alleges a host of employment-related wrongs, including discriminatory performance evaluations, discriminatory changes in working conditions related to his research activities, discriminatory discipline, and constructive discharge. Because Dr. Li's complaint is largely duplicative of one he filed in the United States District Court for the District of Maryland (hereafter "the Maryland complaint"), which has been dismissed subject to a pending appeal, the district court dismissed the D.C. complaint on what we are told were preclusion grounds.[1] "Under the doctrine of

---

[1] The district court's order dismissed Dr. Li's complaint "for essentially the reasons advanced by defendants in their motion to

claim preclusion, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 476 (1998) (internal quotations and citations omitted). A judgment is entitled to preclusive effect if (1) the parties in the subsequent action are identical or in privity; (2) the events underlying the claims are substantially related; and (3) the nonmoving party had a full and fair opportunity to litigate the claims. *See Nevada v. United States*, 463 U.S. 110, 129-30 (1982). The judgment dismissing the Maryland complaint is entitled to preclusive effect with respect to nearly all of Dr. Li's claims made in the D.C. complaint. First, the parties are identical with the exception of appellee J.R. Love, who is the former Inspector General at NRL. We consider the claim against Love separately below. Second, with one possible exception, all of the events and allegations recited in both the Maryland and the D.C. complaints relate to the same employment-related conduct. Finally Dr. Li had every incentive and every opportunity to litigate his claims in the Maryland complaint in the District of Maryland.

With respect to appellee Love, Dr. Li alleges that he improperly failed to investigate claims of alleged fraud by

---

dismiss and related filings." While appellees have not favored this court with a copy of their memorandum of law supporting their motion to dismiss below, appellees represent in their brief that they had argued for dismissal on the grounds of preclusion by the judgment in the District of Maryland. The omission is not material, because this court's review of the dismissal of the complaint is de novo, *Kowal v. MCI Communications Corp.*, 16 F.3d 1271, 1273 (D.C. Cir. 1994), and, having independently reviewed the complaints filed by Dr. Li in both Maryland and in the District of Columbia and the remainder of the appellate record, we find no error in the dismissal.

appellees Montgomery, Zwack and Klemm.[2] Appellees contend that even though Dr. Li did not assert this claim in the Maryland complaint, he could have. Further, they contend, because Love's alleged failure to investigate the alleged wrongdoing is "substantially related" to the wrongdoing itself, and because Love, as an NRL employee is in privity with the defendants in the Maryland action, Dr. Li lost his chance to assert this claim against appellee Love when he did not assert it in the Maryland complaint. The government may be right. Certainly, to the extent that Dr. Li asserts that Love's failure to investigate was part of a conspiracy with the other appellees to harm him, his claim is precluded. But in light of Dr. Li's pro se status, and assuming for the sake of argument that a claim for failure to investigate wrongdoing is sufficiently different from the claims concerning the wrongdoing itself to escape preclusion, cf. Weber *v. united States,* No. 99-5087, 2000 WL 390438 (D.C. Cir. Apr. 28, 2000), Dr. Li has failed to allege any facts that would subject Love to liability in his individual capacity. Aside from a conspiracy theory, at most Dr. Li asserts that Love did not do his job as thoroughly as Dr. Li thinks he should have.

Finally, also assuming for the sake of argument that Dr. Li could bring an action under the doctrine of *Bivens v. Six Unknown Federal Narcotics Agents,* 403 U.S. 388 (1971), for the alleged "looting" and "stealing" of his ideas, and assuming this claim is sufficiently different to escape preclusion, even after the D.C. complaint is construed liberally in Dr. Li's favor, see *Henthorn v.*

---

[2] Dr. Li also brought an action before the Merit Systems Protection Board alleging that he was constructively discharged in retaliation for having disclosed the same alleged fraud. The Board held, and the Federal Circuit affirmed, that Dr. Li's supervisors were unaware of his alleged whistleblowing activities, including asking appellee Love to investigate, at the time the conduct about which Li complained occureed. See Li v. *Department of the Navy,* 1997 WL 797803 (Fed. Cir. 1997) (per curliam) (unpublished opinion).

Department of the Navy, 29 F.3d 682, 684 (D.C. Cir. 1994), the allegations therein are insufficient to state a claim for which relief can be granted. Dr. Li's assertion of property rights in patentable discoveries fails to rebut the presumption that he assigned title and all other rights to such discoveries by operation of law, *see* 37 C.F.R. § 501.6(a) (1), (3) (2000), and even it had, the D.C. complaint fails to connect appellees with the disclosures alleged to constitute the looting and stealing.

Accordingly, we affirm the order dismissing the D.C. complaint.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No.: 98-2719(TPJ)

MING-CHIANG LI,
Plaintiff

v.

JOHN A. MONTGOMERY, et al.,
Defendants

ORDER Upon consideration of the "motion for amendment of complaint" filed by plaintiff, the motion to dismiss, or in the alternative, to transfer filed by defendants, plaintiff's oppositions thereto, and the entire record herein, it is this 17th day of March, 1999,

ORDERED, that the "motion for amendment of complaint" is granted; and it is,

FURTHER ORDERED, that this action is dismissed with prejudice, for essentially the reasons advanced by defendants in their motion to dismiss and related filings.

/s/ Thomas Penfield Jackson
U.S. District Judge